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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,166	01/13/2004	Edward B. Keller	UNI29 111	3545
7590	08/23/2007			
John M. Johnson Carter Ledyard & Milburn LLP 2 Wall Street New York, NY 10005			EXAMINER MEINECKE DIAZ, SUSANNA M	
			ART UNIT 3694	PAPER NUMBER
			MAIL DATE 08/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/757,166

Applicant(s)

KELLER ET AL.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 21, 2007 has been entered.

Claims 1-11 have been amended.

Claims 1-11 are presented for examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection, which are necessitated by Applicant's claim amendments.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claim 1 sets forth that the invention is a method for identifying individuals in a population having a greater probability than other individuals in the population of influencing the choices made by individuals in the population; however, the body of the claim does not accomplish what the preamble set out to do.

Consequently, the metes and bounds of the claimed invention are not clear.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Under the statutory requirement of 35 U.S.C. § 101, a claimed invention must produce a useful, concrete, and tangible result. For a claim to be useful, it must yield a result that is specific, substantial, and credible (MPEP § 2107). A concrete result is one that is substantially repeatable, i.e., it produces substantially the same result over and over again (*In re Swartz*, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000)). In order to be tangible, a claimed invention must set forth a practical application that generates a real-world result, i.e., the claim must be more than a mere abstraction (*Benson*, 409 U.S. at 71-72, 175 USPQ at 676-77). Additionally, a claim may not preempt abstract ideas, laws of nature or natural phenomena nor may a claim preempt every "substantial practical application" of an abstract idea, law of nature or natural

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phenomena because it would in practical effect be a patent on the judicial exceptions themselves (*Gottschalk v. Benson*, 409 U.S. 63, 71-72 (1972)). (Please refer to the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" for further explanation of the statutory requirement of 35 U.S.C. § 101.)

Claim 1 produces the result of validating a plurality of predictive variables to create a database scoring algorithm; however, the variables and scoring algorithm are so broadly recited that it is difficult to assess how such a result is useful and practical in the real world. At present, the variables and scoring algorithm are not specific and they reflect nothing more than a mere abstraction. It should be noted that dependent claim 2 is statutory because the step of analyzing the answers by the individuals in the population to determine which of the individuals in the population have a greater probability than other individuals in the population of influencing choices made by individuals in the population demonstrates a useful and practical application of the claimed predictive variables and database scoring algorithm.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burson-Marsteller's e-fluentials<sup>SM</sup> research, as disclosed in Burson-Marsteller's archived e-fluentials web site, retrieved from [URL: <http://web.archive.org/.../efluentials.com...>], herein referred to as "Burson-Marsteller's e-fluentials<sup>SM</sup> research," and the article "Ninety Percent of Online Influentials Turn to Company Web Sites For Corporate Information, But Only 17 Percent Find Them Credible," herein referred to as "Ninety Percent." The web pages have been archived by web.archive.org on June 1, 2002, February 3, 2003, and February 15, 2003. "Ninety Percent" makes specific reference to the efluentials web site <http://www.efluentials.com> and to Burson-Marsteller's e-fluentials<sup>SM</sup> research and, therefore, is deemed to provide further information regarding features inherent to Burson-Marsteller's e-fluentials<sup>SM</sup> research.

E-fluentials discloses a method for identifying individuals in a population having a greater probability than other individuals in the population of influencing the choices made by individuals in the population comprising:

[Claims 1, 6] a. determining if each individual in a first population is influential (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. "Representing 10% of the online population, approximately 11 million users, this group reaches more people on more topics than the average online users." Pages 5-23 show the results of an E-fluential analysis);

[Claims 2, 7] wherein determining if each individual in the first population is influential comprises:

a. formulating queries to be answered by an individual in the first population such that the answers by an individual in the population indicate whether the individual has a greater probability than other individuals in the population of influencing choices made by individuals in the first population (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. "Representing 10% of the online population, approximately 11 million users, this group reaches more people on more topics than the average online users");

b. providing the queries to individuals in the population (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential; Page 3 -- E-fluential quiz questions are shown); and

c. analyzing the answers by the individuals in the population to determine which of the individuals in the population have a greater probability than other individuals in the population of influencing choices made by individuals in the population (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. Pages 5-23 show the results of an E-fluential analysis);

[Claims 3, 8] wherein the choices made by individuals are selected from the group consisting of:

consumer product decisions, consumer service decisions, political issue decisions, political candidate decisions, personal finance decisions, investment

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decisions, real estate decisions, insurance decisions, travel decisions, and leisure decisions (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., a decision relating to politics, and making friends online, e.g., a leisure decision);

[Claims 4, 9] wherein the queries are based on factors selected from the group consisting of:

written or called any politician at the state, local, or national level; attended a political rally, speech, or organized protest of any kind; attended a public meeting on town or school affairs; held or run for political office; served on a committee for some local organization; served as an officer for some club or organization; written a letter to the editor of a newspaper or magazine or called a live radio or TV show to express an opinion; signed a petition; worked for a political party; made a speech; written an article for a magazine or newspaper; and been an active member of any group that tries to influence public policy or government (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., writing a politician (who is understood in the United States as being at the state, local, or national level), and sending e-mails to well-known news and media companies such as Time, Newsweek, or CNBS, e.g., writing a letter to a newspaper or magazine. The role of the recited editor is not defined in such a way that it affects the structure or functionality of the claimed invention; therefore, any individual who receives e-mail at a well-known news and media company from the potential E-fluential individual can be interpreted as the recited "editor");



[Claims 5, 10] wherein the queries are based on factors selected from the group consisting of:

written or called any politician or contacted any government official at local regional or national level; attended a political rally, speech or event; attended a public meeting on town or school affairs; led or served on a committee on some local organization; written a letter to the editor of a newspaper or magazine or called a live radio or TV show to express an opinion; made a speech or gave a talk to a group; been an active member of a group that tries to influence public policy or create change in the community; asked a question in a public meeting; made a complaint to a store, company, or organization; made a sizable donation to a local or national organization; attended business lunches or dinners on a regular basis, and organized a special social event (Burson-Marsteller's e-fluentials<sup>SM</sup> research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., writing a politician (who is understood in the United States as being at a local, regional, or national level));

[Claim 11] wherein the additional informational data is based on factors selected from the group consisting of:

household size, household income, occupation, presence of young adult in household, retail purchase activity, political affiliation, corrective lenses, golf participant, cd player owner, personal or home computer owner, pc operating system type, religious or inspirational reader, religiously active, active in theater or performing arts, active in general arts or culture, active in current affairs or politics (Burson-Marsteller's e-

fluentials<sup>SM</sup> research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., active in politics).

Regarding claims 1 and 6, the Burson-Marsteller's e-fluentials<sup>SM</sup> research selects e-fluentials using a predictive algorithm based on their earlier research ("Ninety Percent": ¶ 7). This research has been used to identify which characteristics (i.e., variables) are most closely associated with e-fluentials (Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential." (Pages 5-23 show the results of an E-fluential analysis). While the e-fluential references do not expressly disclose how the predictive algorithm is performed, it remains evident from these references that a smaller group of the most influential people are identified based on a collection of characteristics (or variables) normally associated with the most influential people in a group. For example, the e-fluentials web site explains that e-fluentials frequently perform the activities that are the subject of the quiz used to identify e-fluentials, such as sending e-mails to politicians and well-known news and media companies (Burson-Marsteller's e-fluentials<sup>SM</sup> research: pages 3, 11, and 23). Since these variables are determined to be useful and predictive of the most influential people in a group, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the e-fluentials research to provide a plurality of data vectors, wherein each data vector in the plurality of data vectors corresponds to an individual in the first population, and wherein each data vector contains information corresponding to set of descriptive

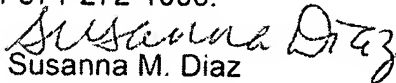
variables and identifying a plurality of predictive variables from the set of descriptive variables wherein the plurality of predictive variables substantially correlate with an individual in the first population being determined to be influential in order to practically apply Burson-Marsteller's past research to make future predictions regarding which people are the most influential within a group, thereby perpetuating the usefulness of such research over time. Additionally, Official Notice is taken that it was old and well-known in the art of predictive modeling at the time of Applicant's invention to validate predictive variables (used to create an algorithm) on a second group of test subjects; validation of the predictive variables helps to ensure that the model is taking into account the most effective variables at making accurate predictions. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to validate e-fluentials' predictive model to incorporate the step of validating the plurality of predictive variables on a second group of test subjects to create a database scoring algorithm (e.g., by selecting a second population, applying the database scoring algorithm to a plurality of test data vectors to determine a group of influential individuals, wherein each test data vector corresponds to an individual in the second population, wherein each data vector contains information corresponding to the plurality of predictive variables, and wherein the group of influential individuals represent a subgroup of the second population and are predicted to have a higher probability of being influential with respect to the second population in general) in order to help ensure that the model is taking into account the most effective variables at making accurate predictions.

**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Susanna M. Diaz  
Primary Examiner  
Art Unit 3694

August 20, 2007